

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

BEHRINGER HARVARD LAKE)	3:13-CV-0057-RCJ (VPC)
TAHOE, LLC,)	
)	
Plaintiff,)	<u>MINUTES OF THE COURT</u>
)	
vs.)	
)	
BANK OF AMERICA, N.A., et al.,)	
)	
Defendants.)	
)	

PRESENT: THE HONORABLE VALERIE P. COOKE, U.S. MAGISTRATE JUDGE

DEPUTY CLERK: LISA MANN REPORTER: NONE APPEARING

COUNSEL FOR PETITIONER(S): NONE APPEARING

COUNSEL FOR RESPONDENT(S): NONE APPEARING

MINUTE ORDER IN CHAMBERS:

The court has reviewed the parties' joint case management report (#47). The parties' request to vacate the case management conference set for Monday, June 3, 2013 at 9:00 a.m. is **GRANTED**. The request to continue the discovery plan and scheduling order (#33) is **DENIED without prejudice**.

The explosion of Rule 12(b)(6) motions in the wake of *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 127 S.Ct. 1955, 167 L.Ed.2d 929 (2007), and *Ashcroft v. Iqbal* 556 U.S. 662, 129 S.Ct. 1937, 173 L.Ed.2d 868 (2009), has made speedy determinations of cases increasingly more difficult. Prohibiting or delaying all discovery will often cause unwarranted delay, especially if a pending dispositive motion challenges fewer than all of plaintiff's claims.

A stay of all discovery should only be ordered if the court is "convinced" that a plaintiff will be unable to state a claim for relief. However, as the court in *Mlejnecky v. Olympus Imaging America, Inc.*, 2011 WL 489743 at *6 (E.D.Cal. Feb. 7, 2011) recognized, taking a "preliminary peek" and evaluating a dispositive motion puts a magistrate judge in an awkward position.

Rather, this court's role is to evaluate the propriety of an order staying or limiting discovery with the goal of accomplishing the objectives of Fed.R.Civ.P. Rule 1. With Rule 1 as its prime directive, this court must decide whether it is more just to speed the parties along in discovery and other proceedings while a dispositive motion is pending, or whether it is more just to delay or limit

discovery and other proceedings to accomplish the inexpensive determination of the case. *Tradebay, LLC v. Ebay, Inc.*, 278 F.R.D. 597, 603 (D.Nev. 2011).

With these principles in mind, the parties shall have leave to refile either a stipulation to stay discovery, or alternatively, a motion to stay discovery outlining a more specific and detailed reason for staying discovery in this case.

IT IS SO ORDERED.

LANCE S. WILSON, CLERK

By: _____ /s/
Deputy Clerk